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Congress of the United States
House of Representatives
July 20, 2015

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TRANSPORTATION AND
INFRASTRUCTURE
HOMELAND SECURITY
FOREIGN AFFAIRS

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FCC Mail Room

CBG
CONSUMERS
TCPA

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler,

Last week your agency approved a regulation that expands the reach of the Telephone Consumer Protection Act. The expanded definition of "automatic telephone dialing system" (ATDS) will have an enormous negative impact on businesses outside of the telemarketing industry. You state that in your deliberation the reasoning behind this ruling was to provide protection to consumers. While I agree that the protection of Americans' privacy is important, this ruling grossly hinders legitimate businesses who make a living off this technology.

As you may know, the Accounts Receivable Management industry relies on ATDS technology to track down individuals for collection of money for goods and services. Your agency's regulation would prohibit companies from using ATDS technology to call cell phones. With home land lines dwindling across the country, collection companies must rely on cell phones to contact delinquent consumers. In my district, Penn Credit Corporation utilizes ATDS technology - this regulation will cripple their business, and many others like it.

Your regulation also prohibits companies from redialing numbers that may have changed. Again, companies such as Penn Credit are paid to track down consumers at all costs. Allowing only one dial for wrong numbers significantly hinders them from doing their job.

While I agree that the telemarketing industry should not be in the business of gathering cell phone numbers and repeatedly invading people's privacy, I request a carve-out in your regulation for the Accounts Receivable Management industry. Again, this industry needs this technology to survive

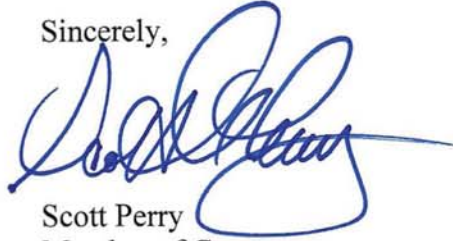
If you have questions or require additional information, please contact me or my Chief of Staff, Lauren Muglia, at (202) 225-5836. I appreciate your consideration and await your timely response.

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Sincerely,

A handwritten signature in blue ink, appearing to read 'Scott Perry', with a large, stylized flourish extending to the right.

Scott Perry
Member of Congress



Modernize the Telephone Consumer Protection Act of 1991 (TCPA)

In 1991, the Telephone Consumer Protection Act (TCPA) was enacted to address a growing number of telemarketing calls and certain practices found to be an invasion of consumer privacy. It includes a provision that prohibits the use of automated telephone dialing systems (ATDS) without a consumer's prior consent when calling a wireless phone.

Problem

The TCPA has not kept pace with technology and the rapid growth of consumer mobile device usage. In 2015, we are relying on a statute that was enacted well over two decades ago to govern modern communications technology and practices. This disconnect has caused a lack of clarity which greatly threatens one of the most fundamental aspects of consumer debt collection: communication.

Key Points

- **Americans increasingly rely on mobile telephones to communicate.** Today, 90 percent of Americans own wireless telephones and 58.8 percent of households are mostly or entirely wireless-only. Without common-sense reforms to remove the uncertainty of TCPA liability, time-sensitive, informational calls to mobile phones that consumers expect and want will be chilled. Notifications such as airline flight changes, adverse financial actions, negative credit reporting, due date reminders, and data breaches are all threatened without reform. Congress did not intend for the TCPA to act as a communication barrier between legitimate businesses and their customers.
- **The outdated TCPA is being exploited by opportunistic plaintiff attorneys.** Between 2010-2014, TCPA litigation has skyrocketed 560%. Given the current uncertainty, trial lawyers can twist ambiguous language in the TCPA to file class action lawsuits against large and small non-telemarketing businesses, compelling settlements even when there is no wrongdoing. Such frivolous lawsuits, which carry enormous financial risk, overburden the courts and the credit and collections industry while providing only nominal relief to actual consumers (see attached chart).
- **TCPA reforms are being supported by a wide range of industries and businesses of all sizes, all of whom face tremendous risk due to current uncertainty.** Fear of unknown TCPA liability has made it very difficult for compliance-minded business, especially small businesses, to place informational calls to their customers. Instead of actual wrongdoing, current TCPA liability often hinges on sheer luck of who happens to answer a call or which court is assigned a case. Currently, even dialing mobile numbers manually carries risk until clarification is made over what constitutes an ATDS.
- **The Administration has recognized the importance of using modern technology to recover outstanding Federal debt.** On several occasions, including again in 2015, the Administration has recommended in its budget request to allow calls with an autodialer to consumer mobile devices to recover taxpayer-owed dollars to the Federal government. The U.S. Department of Education made a similar recommendation in 2013 for the recovery of student loans. These recommendations underscore that modern calling technology facilitates a more efficient and accurate process for reaching targeted consumers who rightfully owe a debt, the recovery of which benefits the entire economy.

ACA's Solution

The TCPA must be modernized to reflect the explosive growth and massive changes in communications technology and mobile device use since its passage in 1991.

ACA submitted a petition for rulemaking to the FCC seeking clarity on TCPA rules and regulations to do the following: 1) confirm that all predictive dialers are not categorically ATDS; 2) confirm that "capacity" under the TCPA means present ability; 3) clarify that express consent attaches to the debtor, not the phone number; and 4) establish a safe harbor with retroactive relief for non-telemarketing, wrong number calls to mobile telephones. Expedient resolution of ACA's petition, along with efforts by Congress to modernize the statute, will ensure that the TCPA is not an unintended barrier to time-sensitive, informational calls while continuing to protect consumers from unwanted telemarketing calls.

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TCPA Class Action Settlements (Updated January 27, 2015)

Date: 1. Case Filed 2. Settlement Filed 3. Settlement Approved	Case Name	Potential Class Size	Total Amount Allocated	Attorneys' Fee/ Cost Allocation	Per Member Recovery if All Claim¹
1. April 9, 2013 2. September 30, 2014 3. February 11, 2015	<i>Hageman et al. v. AT&T Corp. et al.</i> (C.D. Mont.)	16,000	\$45 Million	\$15 Million	Pro rata cash awards not to exceed \$500
1. January 10, 2014 2. June 17, 2014 3. July 25, 2014	<i>HSBC v. Wilkins Bank</i> (N.D. Ill.)	1.4 Million	\$39.975 Million	Approx. \$12 Million	\$20
1. October 12, 2012 2. September 5, 2014 3. October 2, 2014	<i>Couser v. Comenity Bank</i> (S.D. Cal.)	4 Million	\$8.4 Million	\$2.118 Million	\$1
1. July 11, 2012 2. August 7, 2014 3. In Preliminary Approval	<i>Gebreich v. Chase Bank USA and JP Morgan Chase Bank</i> (N.D. Ill.)	1.15 Million	\$34 Million	\$11 Million Cap	\$20
1. June 17, 2011 2. January 12, 2013 3. May 24, 2013	<i>Spillman v. RPM Pizza</i> (M.D. La.)	Unknown	\$9.76 Million	Up to \$3 Million	\$15 per person or a free one topping pizza depending on claim period
1. August 25, 2010 2. August 27, 2012 3. February 15, 2013	<i>Sarabri v. Weltman, Weinberg & Reis</i> (S.D. Cal.)	618,000	\$525,000	\$225,000	\$0.85
1. June 16, 2010 2. June 18, 2012 3. June 28, 2012	<i>Malta v. Fed Home Loan Mortgage</i> (S.D. Cal.)	5,877,508	\$17.1 Million	\$4.275 Million	\$2.91
1. February 8, 2008 2. April 18, 2012 3. September 28, 2012	<i>Adams v. Alliance One</i> (S.D. Cal.)	6,079,411	\$9 Million	\$2.7 Million	\$1.48
1. February 2, 2010 2. April 3, 2012 3. September 17, 2012	<i>Arthur v. Sallie Mae</i> (W.D. Wash.)	7,792,256	\$24.15 Million	\$4.83 Million	\$3.10
1. May 6, 2011 2. March 12, 2012 3. June 15, 2012	<i>Cain v. Consumer Portfolio</i> (N.D. Ill.)	4,035	\$1.1 Million	\$363,000	\$272.61
1. June 16, 2010 2. March 12, 2012 3. May 30, 2014	<i>Connor v. JP Morgan Chase</i> (S.D. Cal.)	1,718,866 but 1,181,441 with monetary claims	Between \$7 Million and \$9 Million	\$3 Million	\$7.62
1. August 25, 2009 2. October 21, 2011 3. October 21, 2011	<i>Palmer v. Sprint</i> (W.D. Wash.)	"Up to Thousands" but notice sent to 5,900,000	\$5.5 Million	\$1.54 Million	\$0.93
1. September 23, 2011 2. August 1, 2012 3. February 20, 2013	<i>In re Jiffy Lube Int'l Inc.</i> (C.D. Cal.)	2.3 Million	\$35-\$47 Million	\$4.75 Million	1 coupon per claimant valued at \$17.29 with reduced redemption value of \$12.97 post-expiration
1. June 25, 2010 2. June 22, 2011 3. January 24, 2012	<i>Grannan v. Alliant Law</i> (N.D. Cal.)	137,981	\$1 Million in insurance relief	\$250,000	\$7.25
1. September 18, 2009 2. April 12, 2011 3. September 20, 2011	<i>Lemieux v. Global Credit</i> (S.D. Cal.)	27,844	\$150,000-\$505,000	\$200,000	\$18.14
1. August 2, 2007 2. September 10, 2008 3. September 10, 2008 (Preliminary Approval)	<i>Bellows v. NCO Financial</i>	Unknown, but likely in the thousands	\$950,000	\$300,000	Unknown

¹ This is an approximate value and does not include the deductions for attorneys' fees and costs of administration.



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

October 26, 2015

The Honorable Scott Perry
U.S. House of Representatives
126 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Perry:

Thank you for your letter regarding concerns raised by Penn Credit about the Commission's declaratory rulings clarifying the consumer protections in the Telephone Consumer Protection Act (TCPA) and the Commission's related rules. In your letter, you acknowledge the importance of protecting consumer privacy, but you also request a carve-out from TCPA regulation from the Accounts Receivable Management industry.

In 1991, Congress enacted the TCPA to protect consumers from unwanted autodialed or prerecorded telemarketing calls. The statute is clear: it prohibits the use of automatic telephone dialing systems and artificial or prerecorded voice messages to make non-emergency calls (including calls from debt collectors) to, among others, mobile phones without prior express consent.

The Commission is committed to the TCPA's goal of protecting consumers from unwanted calls and texts. We know consumers value their privacy, regardless of whether unwanted efforts to reach them target their home landlines or wireless phones. The TCPA makes clear that consumers can choose which calls they want and do not want.

In its declaratory rulings, the Commission reiterated its previous statutory interpretations of "autodialer," which is based on a piece of equipment's capacity. Our action is true to the language of the statute, as well as Congress's intent when passing the law that robocallers cannot skirt consent requirements through changes in technology design. We also closed the "reassigned number" loophole, making clear that consumers who inherit a phone number will not be subject to a barrage of unwanted robocalls consented to by the previous subscriber to the number. And we emphasized a significant point for businesses: the TCPA *does not* prohibit the use of efficient robocalling equipment. Rather, it simply requires that a caller get the consumer's consent before making the call, something that is easier now than it has ever been.

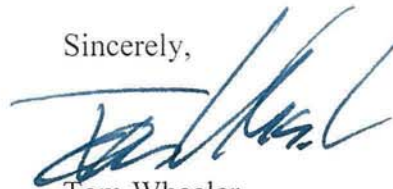
The Commission has previously addressed consent in the debt collection context. In 2008, it granted a clarification regarding consent that was requested by a trade organization of credit and collection companies. There, the Commission found that autodialed and prerecorded message calls to wireless numbers provided by the called party to a creditor during the transaction that resulted in the debt are made with the "prior express consent" of the called party.

and therefore permissible under the TCPA. Calls placed by a third-party debt collector on behalf of that creditor are treated as if the creditor itself placed the call. The Commission's recent 2015 rulings did not change the 2008 clarification regarding consent in the debt collection context.

The Commission's decisions on these issues were based on an extensive record in response to the petitions, including numerous informative meetings with trade associations, small business owners, state attorneys general, consumer groups, and other interested parties. Please be assured that we have carefully considered the input of all stakeholders, including callers and consumers.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,



Tom Wheeler